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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 121101598-3124-01]

RIN 0648-XC334

Atlantic Highly Migratory Species; North and South Atlantic 2013 Commercial Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the 2013 fishing season quotas for North and South Atlantic swordfish based upon 2012 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 11-02 and 12-01. This proposed rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by 5 p.m., local time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0030, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D= NOAA-NMFS-2013-0030](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0030), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Fax: 301-713-1917, **Phone:** 301-427-8503; **Attn:** Margo Schulze-Haugen

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

NMFS will hold one public hearing on this proposed rule on March 14, 2013. The public hearing will be held in Silver Spring, MD and may be combined with a hearing for another relevant action. For specific location, date, and time, see the SUPPLEMENTARY INFORMATION section of this document.

Copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) for North Atlantic swordfish, the 2007 EA, RIR, and IRFA for South Atlantic swordfish, and the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan—are available

from the HMS Management Division website at <http://www.nmfs.noaa.gov/sfa/hms/> or by contacting Jennifer Cudney by phone at 301-427-8503 or Steve Durkee by phone at 202-670-6637.

FOR FURTHER INFORMATION CONTACT: Jennifer Cudney by phone at 301-427-8503 or Steve Durkee by phone at 202-670-6637, or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq., and ATCA, 16 U.S.C. 971 et seq. The United States implements ICCAT recommendations under ATCA, through regulations as may be necessary and appropriate.

North Atlantic Swordfish Quota

At the 2011 ICCAT meeting, Recommendation 11-02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2013. Of this TAC, the United States baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 11-02 also includes a 112.8 mt dw (150 mt ww) annual quota transfer from the United States to Morocco and limits allowable underharvest carryover to 25 percent of a contracting party's baseline quotas. Therefore, the United States may carry over a maximum of 734.4 mt dw (976.8 mt ww) of underharvest from the previous year (2012) to be added to the 2013 baseline quota. This proposed rule would adjust the U.S. baseline quota for the 2013 fishing year to account for the annual quota transfer to Morocco and the 2012 underharvest.

The 2013 North Atlantic swordfish baseline quota is 2,937.6 mt dw (3,907 mt ww). The preliminary North Atlantic swordfish underharvest for 2012 was 1,209.4 mt dw (1,608.5 mt ww) as of December 31, 2012, which exceeds the maximum carryover cap of 734.4 mt dw (976.8 mt ww). Therefore, NMFS is proposing to carry forward the maximum amount allowed per ICCAT Recommendation 11-02. The 2,937.6 mt dw (3,907 mt ww) baseline quota would be reduced by the 112.8 mt dw (150 mt ww) annual quota transfer to Morocco and increased by the underharvest carryover maximum of 734.4 mt dw (976.8 mt ww), resulting in 3,559.2 mt dw (4733.7 mt ww), which is the proposed adjusted North Atlantic swordfish quota for the 2013 fishing year. From that proposed adjusted quota, the directed category would be allocated 3,209.2 mt dw (4,268.2 mt ww), which would be split equally into two seasons in 2013 (January through June, and July through December). Fifty mt dw (66.5 mt ww) would be allocated to the reserve category for inseason adjustments and research, and 300 mt dw (399 mt ww) would be allocated to the incidental category, which includes recreational landings and catch by incidental swordfish permit holders, for the 2013 fishing season, per § 635.27(c)(1)(i)(B) (Table 1).

The landings and proposed quota for North Atlantic swordfish are based on commercial dealer reports and reports by anglers in the HMS Non-Tournament Recreational Swordfish and Billfish Landings Database and the Recreational Billfish Survey received as of December 31, 2012, and do not include dead discards. We will adjust the quotas in the final rule based on updated data, including dead discard data, if available. Thus, while the 2013 proposed North Atlantic swordfish quota is subject to further adjustments and we are notifying the public of that potential change, we do not expect the final quota to change from the proposed quota. The United States has carried over the full amount of underharvest allowed under ICCAT recommendations for the past several years, and we do not expect fishing activity to vary

significantly from these past years. For the final quota to deviate from the proposed quota, the sum of updated landings data (from late reports) and dead discard estimates would need to reach or exceed 475 mt dw. In 2011, dead discards were estimated to equal 101.5 mt dw and late reports equaled 108.4 mt dw. Consequently, we do not believe updated data and dead discard estimates will change the adjusted quota.

South Atlantic Swordfish Quota

In 2006, ICCAT Recommendation 06-03 established the South Atlantic swordfish TAC at 17,000 mt ww for 2007, 2008, and 2009. Of this, the United States received 75.2 mt dw (100 mt ww). As with the North Atlantic swordfish recommendation, ICCAT Recommendation 06-03 limited the amount of underharvest that can be carried forward. For South Atlantic swordfish, the United States may carry forward up to 100 percent of the base quota (75.2 mt dw). In 2009, Recommendation 09-03 reduced the South Atlantic swordfish TAC to 15,000 mt ww but maintained the U.S. quota share of 75.2 mt dw (100 mt ww) and underharvest carryover limit through 2012. Recommendation 09-03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the U.S. to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize. In November 2012, ICCAT Recommendation 12-01 extended the U.S. baseline quota, underharvest carryover limit, and international quota transfer amounts and provisions through 2013.

In 2012, U.S. fishermen did not land any South Atlantic swordfish as of December 31, 2012. Therefore, 75.2 mt dw (100 mt ww) of underharvest is available to carry over to 2013 and can cover the entire 75.2 mt dw (100 mt ww) of annual international quota transfers outlined above. As a result, the 2013 adjusted quota for South Atlantic swordfish is 75.2 mt dw (100 mt ww) (Table 1).

The landings and proposed quota for South Atlantic swordfish are based on dealer reports received as of December 31, 2012, and do not include dead discards. We will adjust the quotas in the final rule based on updated data, including dead discard data, if available. Thus, the 2013 proposed South Atlantic swordfish quota is subject to further adjustments. However, the United States has only landed South Atlantic swordfish once in the past several years (0.2 mt dw in April 2010) and is unlikely to do so during the remainder of 2012. For this reason, we do not expect the final quota to change from the proposed quota.

Impacts

Impacts resulting from the 2013 North Atlantic swordfish specifications are analyzed in the EA, RIR, and IRFA that were prepared for the 2012 Swordfish Quota Specifications Final Rule (July 31, 2012; 77 FR 45273). The impacts resulting from the 2013 South Atlantic swordfish specifications were analyzed in the EA, RIR, and IRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929). The proposed quota adjustments would not increase overall quotas and are not expected to increase fishing effort, protected species interactions, or environmental effects beyond those considered in the 2012 and 2007 EAs. Therefore, because there would be no changes to the North or South Atlantic swordfish management measures in this proposed rule, or the affected environment or any environmental effects that have not been previously analyzed, NMFS has determined that the North and South Atlantic swordfish specifications and impacts to the human environment as a result of the proposed quota adjustments do not require additional NEPA analysis beyond that discussed in the 2012 and 2007 EAs.

Table 1. 2013 North and South Atlantic Swordfish Quotas

| North Atlantic Swordfish Quota (mt dw) | | 2012 | 2013 |
|--|---------------------|-------------|-------------|
| Baseline Quota | | 2,937.6 | 2,937.6 |
| Quota Transfer to Morocco | | (-)112.8 | (-)112.8 |
| Total Underharvest from Previous Year ⁺ | | 1,388.5 | 1,209.4 |
| Underharvest Carryover from Previous Year ⁺ | | (+)734.4 | (+)734.4 |
| Adjusted Quota | | 3,559.2 | 3,559.2 |
| Quota Allocation | Directed Category | 3,209.2 | 3,209.2 |
| | Incidental Category | 300 | 300 |
| | Reserve Category | 50 | 50 |
| South Atlantic Swordfish Quota (mt dw) | | 2012 | 2013 |
| Baseline Quota | | 75.2 | 75.2 |
| International Quota Transfers* | | (-)75.2 | (-)75.2 |
| Total Underharvest from Previous Year ⁺ | | 75.2 | 75.2 |
| Underharvest Carryover from Previous Year ⁺ | | 75.2 | 75.2 |
| Adjusted quota | | 75.2 | 75.2 |

+ Underharvest carryover is capped at 25 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. 2012 underharvest current as of December 31, 2012; does not include dead discards.

* Under Recommendation 12-01, 100 mt ww of the U.S. underharvest and base quota, as necessary, was transferred to Namibia (37.6 mt dw, 50 mt ww), Cote d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

NMFS determined that the proposed rules to implement the North Atlantic swordfish quota framework (77 FR 25669, May 1, 2012) and South Atlantic swordfish quota framework (75 FR 35432, June 22, 2010) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish the 2013 North and South Atlantic swordfish quotas does not change the framework previously consulted upon; therefore, no additional consultation is required.

Public Hearings

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax; comments may also be submitted at the public hearing. NMFS solicits comments on this proposed rule by [insert date 30 days after date of publication in the FEDERAL REGISTER]. During the comment period, NMFS will hold one public hearing for this proposed rule. The public hearing will be held at the NMFS Science Center at 1301 East-West Highway, Silver Spring MD on March 14, 2013, from 1:00 – 4:00 p.m. This hearing may be combined with a hearing for another relevant action. The hearing location will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steve Durkee at 202-670-6637, at least 7 days prior to the meeting.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the proposed quota adjustments are the same as in 2012 and the United States is not expected to catch its entire quota in 2013.

This proposed rule would adjust the 2013 baseline quota for North Atlantic swordfish (January 1, 2013, through December 31, 2013) to account for 2012 underharvests and international quota transfers per § 635.27(c)(1)(i) based on ICCAT recommendation 11-02. The United States can carry over 2012 underharvest at a level not to exceed 25 percent of the baseline quota. Additionally, ICCAT Recommendation 11-02 stipulates that the United States transfer 112.8 mt dw (150 mt ww) of quota to Morocco.

In 2012, U.S. fishermen landed 2,349.8 mt dw (3,125.2 mt ww) of North Atlantic swordfish as of December 31, 2012, leaving 1,209.4 mt dw (1,608.5 mt ww) of quota underharvest. This underharvest amount exceeds the maximum underharvest carryover of 734.4 mt dw (976.8 mt ww), therefore, 734.4 mt dw (976.8 mt ww) of 2012 underharvest would be carried over and added to the 2013 baseline quota. The quota transfer of 112.8 mt dw (150 mt ww) to Morocco would be deducted, leaving a proposed 2013 North Atlantic swordfish adjusted quota of 3,559.2 mt dw (4733.7 mt ww) (Table 1).

This proposed rule would also adjust the 2013 baseline quota for South Atlantic swordfish (January 1, 2013, through December 31, 2013) to account for 2012 underharvests and international quota transfers per § 635.27(c)(1)(ii) based on ICCAT recommendation 12-01. The

United States can carry over 2012 underharvest at a level not to exceed 100 percent of the baseline quota. Additionally, ICCAT Recommendation 12-01 stipulates that the United States transfer the following quota amounts to other countries: 37.6 mt dw (50 mt ww) to Namibia; 18.8 mt dw (25 mt ww) to Côte d'Ivoire; and 18.8 mt dw (25 mt ww) to Belize.

In 2012, U.S. fishermen did not land any South Atlantic swordfish as of December 31, 2012. Therefore, 75.2 mt dw (100 mt ww) of underharvest is available to carry over to 2013 and can cover the entire 75.2 mt dw (100 mt ww) of annual international quota transfers outlined above. As a result, the 2013 adjusted quota for South Atlantic swordfish is 75.2 mt dw (100 mt ww) (Table 1).

The commercial swordfish fishery is comprised of fishermen who hold one of three swordfish limited access permits (LAP) (i.e., directed, incidental, or handgear), fishermen who hold an HMS incidental squid trawl permit, and the related industries including processors, bait houses, and equipment suppliers. NMFS considers all participants in the commercial swordfish fishery to be small entities, based on the relevant NAICS codes and size standards set by the Small Business Administration. As of November 2012, there were approximately 180 vessels with a directed swordfish LAP, 75 vessels with an incidental swordfish LAP, and 77 vessels with a handgear LAP for swordfish. Additionally, there were approximately 71 HMS incidental squid trawl permit holders, which allow vessels in the Illex squid fishery to retain up to 15 incidentally-caught swordfish while trawling for squid. Based on the 2011 swordfish ex-vessel price of \$4.44/lb, the 2013 North and South Atlantic swordfish baseline quotas could result in gross revenues of \$28,754,470 (2937.6 mt dw (6,476,232 lbs dw) * \$4.44/lb) and \$734,132 (75.2 mt dw (165,345 lbs dw) * \$4.44), respectively, if the quotas were fully utilized. Under the adjusted quotas of 3,559.2 mt dw (7,846,612 lbs dw) for North Atlantic swordfish and 75.2 mt

dw (165,345 lbs dw) for South Atlantic swordfish, the gross revenues could be \$34,838,957 and \$734,132, respectively, for fully utilized quotas.

Potential revenues per vessel resulting from full utilization of the adjusted quotas, could be \$86,449 for the North Atlantic swordfish fishery and \$1,821 for the South Atlantic swordfish fishery, considering a total of 403 swordfish permit holders. These estimates, however, represent an average across all permit types, despite permit differences in retention limits, target species, and geographical range. For North Atlantic swordfish, directed swordfish permit holders would likely experience higher than average per-vessel revenue due to the use of pelagic longlines and the lack of a retention limit per trip. At the other extreme, HMS incidental squid trawl permit holders would likely experience per vessel revenue well below the average due to the low retention limit per trip (15 swordfish) and because these vessels do not target swordfish and only catch them incidentally. For South Atlantic swordfish, only directed swordfish permit holders would be likely to interact with this stock; therefore, potential revenue is higher than the average for these directed swordfish permit holders, and near zero for the other permit types. Additionally, U.S. fishermen rarely catch South Atlantic swordfish. Over the past 5 years, only 0.2 mt dw of South Atlantic swordfish catch has been reported.

Because the United States' commercial swordfish fishery is not expected to catch its entire quota in 2013, these adjustments will not have a significant impact on a substantial number of small entities. As a result, no initial regulatory flexibility analysis is required, and none has been prepared.

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

Dated: February 15, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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